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## 6 IN THE UNITED STATES DISTRICT COURT

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## FOR THE NORTHERN DISTRICT OF CALIFORNIA

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RENEE SHIZUE YAMAGISHI,

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Plaintiff,

No. C 14-05293 JSW

11

v.

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BANK OF AMERICA, N.A.,

13

Defendant.

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**ORDER REGARDING  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE REGARDING  
JURISDICTION**

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The Court has just received Plaintiff's application for a temporary restraining order ("TRO") and an order to show cause re preliminary injunction.<sup>1</sup> In the papers submitted, it appears that a foreclosure and eviction are scheduled for tomorrow, December 4, 2014. Accordingly, the Court has no option but to set an expedited briefing schedule as well as issue an order to show cause regarding jurisdiction.

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In the event the Court determines that it has jurisdiction to adjudicate the parties' dispute, a hearing on the TRO shall be held on December 4, 2014 at 1:30 p.m. Accordingly, Defendants shall file a response to the application by no later than December 3, 2014 at 3:00 p.m. Should Plaintiff elect to file a reply, it shall be due no later than December 4, 2014 at 10:00 a.m.

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<sup>1</sup> The application is entitled *ex parte* and was filed on December 2, 2014. Plaintiff is HEREBY ORDERED to serve Defendants with all of her case filings and TRO papers and this Order by no later than December 3, 2014 at 11:30 a.m. and shall file proof of such service at its completion.

1       Federal courts are under a duty to raise and decide issues of subject matter jurisdiction  
2 *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12;  
3 *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court determines that  
4 subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed. R. Civ. P.  
5 12(h)(3). Federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life*  
6 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts can only adjudicate cases which the  
7 Constitution or Congress authorize them to adjudicate: those cases involving diversity of  
8 citizenship (where the parties are from diverse states), or a federal question, or those cases to  
9 which the United States is a party. *See, e.g., Kokkonen v. Guardian Life Insurance Co. of*  
10 *America*, 511 U.S. 375 (1994). Federal courts are presumptively without jurisdiction over civil  
11 cases and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Id.*  
12 at 377. The United States is not a party to this case.

13       Having reviewed the complaint, it appears that Plaintiff claims federal jurisdiction for  
14 violations of the United States Constitution, specifically the Fifth Amendment and Fourteenth  
15 Amendment for violations of due process. Title 42 U.S.C. Section 1983 provides the vehicle  
16 for asserting a claim for violations of the Constitution. However, to sustain a claim under this  
17 statute, a plaintiff must establish two essential elements: "(1) that the conduct complained of  
18 was committed by a person acting under color of state law; and (2) that the conduct deprived  
19 plaintiff of a federal constitutional or statutory right." *Wood v. Ostrander*, 879 F.2d 583, 587  
20 (9th Cir. 1989). Here, Plaintiff does not specify a defendant acting as a state actor for purposes  
21 of her due process claims and her claims are subject to dismissal by this Court. *See, e.g.,*  
22 *Brashears v. Bank of America Home Loans*, 2013 WL 5741832, at \*8 (C.D. Cal. Oct. 22, 2013).  
23 Without a valid federal claim, either under 42 U.S.C. Section 1983 or any other federal statute,  
24 this Court lacks jurisdiction over this action.

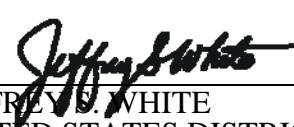
25       Therefore, Plaintiff is HEREBY ORDERED TO SHOW CAUSE in writing, by  
26 **December 3, 2014 by 3:00 p.m.** why this action should not be dismissed for lack of  
27 jurisdiction. If Plaintiff can demonstrate that this Court has jurisdiction, the Court will hear  
28 their application for a restraining order on December 4, 2014 at 1:30 p.m. Plaintiff is

1 admonished that her failure to respond this Order by **December 3, 2014 at 3:00 p.m.**, will  
2 result in a dismissal of this action for lack of subject matter jurisdiction.

3 Should the Court find it lacks jurisdiction to hear this matter, it will dismiss. Should the  
4 Court find cause to exercise jurisdiction, it will hold a hearing on the application for a TRO on  
5 December 4, 2014 at 1:30 p.m. Should no further order issue, the parties shall appear at that  
6 time.

7 **IT IS SO ORDERED.**

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9 Dated: December 3, 2014

  
10 JEFFREY E. WHITE  
11 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

RENEE SHIZUE YAMAGISHI,  
Plaintiff,  
v.  
BANK OF AMERICA, N.A. et al,  
Defendant  
Case Number: CV14-05293 JSW  
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 3, 2014, I SERVED a true and correct copy(ies) of the attached, hand delivery in the Clerk's office.

Renee Shizue Yamagishi  
2703 Mathews Street  
Berkeley, CA 94702

Dated: December 3, 2014

*Jennifer Ottolini*  
Richard W. Wiekling, Clerk  
By: Jennifer Ottolini, Deputy Clerk